



CENTER FOR
FOOD SAFETY



November 14, 2013

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

SUBMITTED VIA FAX AND EMAIL

RE: Freedom of Information Act Request

To the Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. The Animal Legal Defense Fund (ALDF) is a 501(c)(3) nonprofit organization working within the legal system to protect the lives and advance the interests of animals, including animals used in food production. Consistent with these missions and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552, we, Cristina Stella on behalf of CFS, and Jeff Pierce on behalf of ALDF, respectfully request the following information:

- 1. Any and all documents relating to the environmental effects or safety of trenbolone, including but not limited to environmental assessments, findings of no significant impact, and other documents related to National Environmental Policy Act (NEPA) compliance.**
- 2. Any and all documents pertaining to EPA communications with the Food and Drug Administration (FDA) concerning trenbolone, including any documents concerning actual or potential environmental, animal, or human health issues associated with trenbolone.**
- 3. Any and all research and documents related to research on the environmental effects of trenbolone use in Concentrated Animal Feeding Operations (CAFOs) specifically, including but not limited to:**
 - a. That cited in the presentation of Elaine Z. Francis, National Program Director for Pesticides and Toxics Research, entitled "EPA's Endocrine Disruptors Research Program: Characterizing Potential Environmental Sources," June 3, 2011.**

b. That generated or considered by EPA's Endocrine Disruptors Research Program.

- 4. Any and all documents concerning communications or meetings with industry (including but not limited to the pharmaceutical, agricultural, or food industries) or trade groups (including but not limited to pharmaceutical, agricultural, or food trade groups) about trenbolone.**
- 5. Any and all documents concerning complaints or comments from members of the public concerning trenbolone.**

“All documents” includes but is not limited to all correspondence, minutes, memoranda, communications and/or other documents received from or given to other agencies, maps, plans, drawings, emails, reports, studies, research, tests, testing protocols, databases, and phone notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

CFS and ALDF request this information in light of the President's “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.... In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

REQUEST FOR FEE-WAIVER

CFS and ALDF request that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of

this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS and ALDF respectfully remind EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”) Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. The present disclosure is in the public interest because it will contribute significantly to public understanding of the operations or activities of government.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to the environmental effects of trenbolone, an endocrine disruptor that contaminates our water supply. EPA is the federal agency statutorily mandated to regulate such pollutants, and specifically maintains an Endocrine Disruptor Research Program for such purpose. It is irrefutable that producing and reviewing data and research related to trenbolone are clearly identifiable operations and activities of government. Any information discovered by EPA about the presence, persistence, and effects of endocrine disruptors such as trenbolone is of high value to the public knowledge and discourse.

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

As discussed above, the present disclosure will provide the public a better understanding of EPA’s role in regulating harmful pollutants, as well as provide the public with information about a specific contaminant. CFS is a nonprofit organization that informs, educates, and counsels the public —via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, *Food Safety Now!*— on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on trenbolone and its impacts on the environment. ALDF is a nonprofit organization that disseminates information to educate the public better to understand issues related to animal welfare, environmental impact, and the functioning of government. Any information received as a result of this request will be organized, summarized, and disseminated to the public, either directly via our website and other publications or through relevant public filings. ALDF’s educational efforts are supported by hundreds of dedicated attorneys, law

professors, and law students, and more than 110,000 members, all of whom would benefit from the disclosure of the information requested.

In addition, the release of this information will have a significant impact on public understanding because the effect of animal industry, particularly in the form of CAFOs, has recently come under serious public scrutiny, thanks in large part to the work of organizations like CFS and ALDF. Even a single document has the potential for contributing to public understanding. *See Elizabeth Eudey v. Cent. Intelligence Agency*, 478 F. Supp. 1175, 1176 (D.D.C. 1979). Simultaneously, this FOIA request will help CFS and ALDF fulfill their well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands.

II. Obtaining the information is of no commercial interest to CFS or ALDF.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

ALDF is a 501(c)(3) nonprofit animal welfare advocacy organization that addresses, among other concerns, matters related to animal welfare, environmental impact, and the functioning of government. In addition to its litigation and legislative efforts nationwide, ALDF disseminates a variety of information regarding the impacts of industrial animal agriculture upon animals, people, and the environment. Disclosure of the information is in the public interest as ALDF will use and disseminate the information to educate and contribute significantly to the public's understanding of such impacts. Accordingly, ALDF's interest in the information requested cannot be characterized as commercial as defined above.

Based upon the foregoing, CFS and ALDF request that this FOIA request be classified within the EPA's fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS and ALDF, we look forward to a determination within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to 303 Sacramento St, 2nd Floor, San Francisco, CA 94111; or electronically to cstella@centerforfoodsafety.org. Please call Cristina at (415) 826-2770 if you have any further questions about this request. Thank you for your attention to this matter.

Sincerely,

Cristina Stella

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